

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROBERT SAMPSON,)	
)	
Plaintiff,)	
)	Civil Action No. 2:22-CV-05120-JMA-AYS
v.)	
)	
NATIONAL BOARD OF MEDICAL)	
EXAMINERS,)	
)	
Defendant.)	
)	

DECLARATION OF LUCIA MCGEEHAN, PH.D.

I, Lucia McGeehan, declare as follows:

1. I am over eighteen (18) years of age and, unless indicated otherwise, I have personal knowledge of the facts stated below based on my employment at the National Board of Medical Examiners (“NBME”) and/or my review of NBME records maintained in the ordinary course of business.

2. I am the Manager of Examinee Accommodations in NBME’s Disability Services group. I have a Ph.D. in Educational Psychology with a focus in School Psychology. I have been certified as a School Psychologist by the Pennsylvania Department of Education. I am certified as a Nationally Certified School Psychologist by the National Association of School Psychologists. I am a licensed psychologist in the State of Pennsylvania.

3. The NBME is a not-for-profit organization located in Philadelphia, Pennsylvania that provides assessment services for physicians and other the health professions. Its mission is to help protect the health of the public by developing and administering state-of-the-art assessments for evaluating the knowledge and skills of health professionals.

4. Together with the Federation of State Medical Boards, the NBME sponsors the United States Medical Licensing Examination (“USMLE”), which is a standardized examination used to evaluate applicants’ competence for medical licensure in the United States and its territories. The USMLE is designed to assess a physician’s ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills, that constitute the basis of safe and effective patient care.

5. Medical licensing authorities across the country rely upon the USMLE as part of their licensure process for ensuring the qualifications of prospective physicians.

6. There are three “Steps” to the USMLE, all of which must be passed before an individual with a medical degree is eligible to apply for an unrestricted license to practice medicine in the United States. Step 1 is a one-day, computer-based multiple-choice examination that assesses understanding and application of basic science concepts important to the practice of medicine. Step 2 Clinical Knowledge (Step 2 CK) is a one-day, computer-based multiple-choice examination that assesses the application of medical knowledge, skills, and understanding of clinical science for the provision of patient care under supervision. Step 3 is a two-day, computer-based examination that assesses whether examinees can apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine.

7. The USMLE is administered under standard conditions. Examinees take the USMLE Step examinations under the same testing conditions, including standard testing time, and NBME has policies and procedures in place that are intended to help ensure that no examinee or group of examinees receives unfair advantage on the examination. There is an exception to this

policy, however, for individuals with documented disabilities who demonstrate that they need accommodations to access the examination(s).

8. Testing accommodations are available on the USMLE for examinees with a disability, as defined under the Americans with Disabilities Act (“ADA”). All requests for accommodations are individually reviewed and, when warranted (*i.e.*, when the examinee demonstrates that he or she is disabled within the meaning of the ADA and needs accommodations to take the examination in an accessible manner), appropriate accommodations are provided.

9. Accommodations are denied when the submitted documentation fails to demonstrate that the examinee has a disability within the meaning of the ADA. NBME denies requests for extra testing time or other accommodations that have not been shown to be warranted to ensure that its testing program is fair for all examinees, and to protect the reliability of USMLE scores.

10. NBME routinely seeks input from independent professionals with expertise in the relevant disability when evaluating an accommodation request. When it does so, NBME asks the external professional to review all the supporting documentation submitted by the candidate and provide a written report on whether the documentation demonstrates the presence of a physical or mental impairment (as identified by the candidate); if so, whether the impairment substantially limits the candidate’s ability to perform one or more major life activities that are relevant to taking the USMLE; and, if so, to make a recommendation on whether the requested accommodations are appropriate and reasonable.

11. On or about April 3, 2017, NBME received a request for testing accommodations from Robert Sampson. Mr. Sampson sought 50% additional test time (time and 1/2) on the USMLE Step 1 exam, which would be administered over two days (instead of one). A true and

correct copy of Mr. Sampson's accommodation request form dated April 1, 2017, is attached at Exhibit 1.

12. Mr. Sampson included the following documents with his April 2017 request:

- Personal Statement for Accommodations to the NBME Office of Disability Services
- Certification of Prior Test Accommodations from Christopher Heedles, Stony Brook University School of Medicine
- Supplemental Testing Report from Allison Anderson, Ph.D. (date of testing December 16, 2013)
- Psychological Evaluation from Suzanne Michels, Ph.D. (date of testing August 26, 2013)
- March 27, 2017 letter from Christopher Heedles, Stony Brook University
- March 29, 2017 letter from Andrew Lam, M.D. Candidate University of Virginia School of Medicine
- March 29, 2017 letter from Linda De Motta, Stony Brook University School of Medicine
- March 29, 2017 letter from Thomas Aronson, MD
- November 28, 2016 letter to Robert Sampson from Andrew Wackett, M.D., Stony Brook Medicine
- MCAT score report
- Stony Brook Medicine test score report generated on 3/28/17
- May 2005 SAT score report
- June 2008 SAT score report
- November 2008 SAT score report
- October 2008 SAT score report
- June 2008 ACT score report
- 2007 PSAT score report

- 1999 OLSAT score report

13. NBME thoroughly reviewed all documents submitted by Mr. Sampson. It also provided Mr. Sampson's file to an external reviewer, Ben Lovett, Ph.D., for review and recommendation. A true and correct copy of Dr. Lovett's April 25, 2017 report is attached at Exhibit 2.

14. Following NBME's individualized review of Mr. Sampson's request, and based on that review and Dr. Lovett's recommendation, NBME concluded that Mr. Sampson's documentation did not demonstrate a substantial limitation in a major life activity compared to most people or that the requested accommodations are an appropriate modification of his USMLE Step 1 test administration. NBME therefore denied Mr. Sampson's request. A true and correct copy of NBME's June 13, 2017 decision letter to Mr. Sampson is attached at Ex. 3.

15. By letter dated June 22, 2017, Mr. Sampson sought reconsideration of NBME's decision. At that time, he submitted the following additional documents to NBME:

- June 22, 2017 letter from Jan Serrantino, Ed.D., University of California Irvine, Director of Disability Services
- June 17, 2017 Letter from Steven and Shelley Sampson
- Quoted teacher comments and parent letters from grades 1-6
- Original teacher comments with report cards from grades 1-6

16. On June 26, 2017, NBME emailed Mr. Sampson noting that "a few pages of the handwritten notes by Shelley Sampson are dark and illegible," and requesting legible copies if Mr. Sampson wanted the documents included in his file. Mr. Sampson sent new scans but they remained illegible.

17. NBME thoroughly reviewed Mr. Sampson's request for reconsideration. It also provided Mr. Sampson's additional documentation to Dr. Lovett for review. A true and correct copy of Dr. Lovett's July 16, 2017 report is attached at Exhibit 4.

18. Based on Dr. Lovett's recommendation and NBME's independent review of the file, NBME concluded that the documentation submitted did not alter its original decision. As explained in an August 1, 2017 letter to Mr. Sampson, "the documentation submitted to date reveals consistent evidence of intact cognitive and academic functioning relative to most people, and does not demonstrate that standard testing time is a barrier to your access to the USMLE." A true and correct copy of NBME's August 1, 2017 letter is attached at Exhibit 5.

19. Mr. Sampson again sought reconsideration of NBME's decision, by letter received on or about November 30, 2017. At this time, Mr. Sampson submitted:

- An October 9, 2017 letter from Jan Sarrantino, Ed.D.
- A September 6, 2017 letter from Thomas Aronson, M.D.
- An August 10, 2017 letter from Allison Anderson, Ph.D.

20. NBME thoroughly reviewed Mr. Sampson's second request for reconsideration, and also provided Mr. Sampson's new documentation to Dr. Lovett for review. A true and correct copy of Dr. Lovett's December 18, 2017 report is attached at Exhibit 6.

21. Based on Dr. Lovett's recommendation and NBME's independent review of the file, NBME concluded that the supplemental documentation did not alter its decision communicated in its June 13 and August 1, 2017 letters. NBME notified Mr. Sampson of its decision by letter dated January 12, 2018. A true and correct copy of this January 12, 2018 letter is attached at Exhibit 7.

22. On February 22, 2018, Mr. Sampson sent a letter to NBME requesting “an explanation as to why [he is] not being granted disability related accommodations on the USMLE Step 1 exam.” In support of this request, Mr. Sampson submitted:

- A February 15, 2018 letter from Linda De Motta, Learning Specialist, Stony Brook School of Medicine

23. NBME responded to Mr. Sampson’s February 22, 2018 letter by letter dated March 6, 2018, with additional explanation for its decisions. A true and correct copy of NBME’s March 6, 2018 letter is attached at Exhibit 8.

24. On June 29, 2018, Jo Anne Simon wrote a letter to NBME indicating that her law firm represented Mr. Sampson and seeking a “reversal of the NBME’s discriminatory decision.” (She sent a “corrected” letter later that same day.) Attached to this letter was a June 12, 2018 letter from Dr. Aronson.

25. NBME provided a copy of the letter from Mr. Sampson’s lawyer and the attached letter from Dr. Aronson to Dr. Lovett for review. In order to provide Dr. Lovett with all of the information that had been submitted to NBME by Mr. Sampson to date, NBME also provided Dr. Lovett with the documents from Mr. Sampson’s February 2018 submission. Dr. Lovett provided a new report addressing this information. A true and correct copy of Dr. Lovett’s July 12, 2018 report is attached at Exhibit 9. Then, on or around August 5, 2018, Mr. Sampson, through Jo Anne Simon, submitted a new accommodation request form and personal statement to NBME. On this form, he again sought 50% additional time (time and 1/2), with testing over two days instead of one. A true and correct copy of Mr. Sampson’s accommodation request form dated August 2, 2018 is attached at Exhibit 10.

26. NBME thoroughly reviewed all of the documentation provided by Mr. Sampson in June and August 2018. Based on NBME's review of the file and Dr. Lovett's July 2018 recommendations, NBME again concluded that Mr. Sampson's documentation did not demonstrate a substantial limitation in a major life activity compared to most people or that the requested accommodation are an appropriate modification of his USMLE Step 1 test administration. NBME notified Mr. Sampson of its decision by letter dated September 7, 2018. A true and correct copy of this letter is attached at Exhibit 11.

27. On November 14, 2018, NBME received another letter from Mr. Sampson's lawyer, Jo Anne Simon, requesting "a reversal of the NBME's latest discriminatory decision."

28. NBME provided Ms. Simon's letter and all the documentation that had been submitted by Mr. Sampson to NBME to date to two new external experts, Samuel Ortiz, Ph.D., and Kevin Murphy, Ph.D. A true and correct copy of Dr. Ortiz's November 26, 2018 report to NBME is attached at Exhibit 12. A true and correct copy of Dr. Murphy's November 26, 2018 report to NBME is attached at Exhibit 13.

29. Following thorough review of Mr. Sampson's request for reconsideration, and based on Dr. Ortiz's and Dr. Murphy's recommendations and NBME's independent review of the file, NBME again concluded that Mr. Sampson's documentation does not demonstrate a substantial limitation in a major life activity as compared to most people or that additional testing time is an appropriate modification of his USMLE Step 1 test administration. NBME informed Mr. Sampson of its decision by letter dated January 4, 2019, a true and correct copy of which is attached at Exhibit 14.

30. Mr. Sampson took the Step 1 examination on January 23, 2020 under standard time conditions, and he did not pass. A true and correct copy of Mr. Sampson's Step 1 Score Report is attached at Exhibit 15.

31. On April 15, 2022, Mr. Sampson sent a new testing accommodation request to NBME. This time, he requested extra break time and 100% additional testing time (double time). A true and correct copy of Mr. Sampson's April 2022 accommodation request form is attached at Exhibit 16. He also included with this request:

- A new Personal Statement for Accommodations
- A December 2020 neuropsychological evaluation by Jeannette Wasserstein, Ph.D. and Kim Miller, Ph.D.

32. NBME thoroughly reviewed the documentation provided by Mr. Sampson in support of his April 2022 request. It also provided Mr. Sampson's additional materials to Dr. Murphy for an external review. A true and correct copy of Dr. Murphy's May 9, 2022 report to NBME is attached at Exhibit 17.

33. Following review of Mr. Sampson's request, and based on Dr. Murphy's recommendation and NBME's independent review of the file, NBME concluded that Mr. Sampson's documentation does not demonstrate that the requested accommodations are an appropriate modification of his USMLE Step 1 test administration. NBME informed Mr. Sampson that his request for testing accommodations was denied by letter dated June 1, 2022. A true and correct copy of this letter is attached at Exhibit 18.

34. As stated in the USMLE Bulletin of Information, to be eligible to take Step 1 (and Step 2 CK) of the USMLE, for U.S.-based medical students pursuing an MD degree, an individual must be a medical student officially enrolled in, or a graduate of, a US or Canadian medical school

program leading to the MD degree that is accredited by the Liaison Committee on Medical Education (LCME) at the time he or she applies to test and on the day of his or her examination.

35. As also explained in the USMLE Bulletin of Information, examinees may attempt a Step exam four times.

36. Mr. Sampson is not currently registered to take the Step 1 examination.

37. It is my understanding from information in our test development department that the average word count for questions on the Step 1 exam is 132 words.

38. A true and correct copy of school records submitted by Mr. Sampson to NBME is attached at Exhibit 19.

39. A true and correct copy of Mr. Sampson's 1999 OLSAT score report as submitted to NBME is attached at Exhibit 20.

40. A true and correct copy of Mr. Sampson's May 2005 SAT score report as submitted to NBME is attached at Exhibit 21.

41. A true and correct copy of Mr. Sampson's 2007 PSAT score report as submitted to NBME is attached at Exhibit 22.

42. A true and correct copy of Mr. Sampson's June 2008 ACT score report as submitted to NBME is attached at Exhibit 23.

43. A true and correct copy of Mr. Sampson's June 2008 SAT score report as submitted to NBME is attached at Exhibit 24.

44. A true and correct copy of Mr. Sampson's October 2008 SAT score report as submitted to NBME is attached at Exhibit 25.

45. A true and correct copy of Mr. Sampson's November 2008 SAT score report as submitted to NBME is attached at Exhibit 26.

46. A true and correct copy of Mr. Sampson's score report for the MCAT exams that he took on August 16, 2103 and September 18, 2014 is attached at Exhibit 27.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 29, 2022.



Lucia McGeehan, Ph.D.